

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
OLD ST. GEORGE'S LLC, ATK CONSULTING,  
INC. AND THOMAS DeCHIARO,

Docket No.  
08 CV 5321 (SCR)

Plaintiff(s),

- against -

AFFIRMATION

NICHOLAS BIANCO, individually, LOUIS CAMPISI,  
individually, LINDA COOPER, individually,  
BRUCE BARBER, individually, JOHN TEGEDER,  
individually, WILLIAM D. GREGORY, individually,  
THE TOWN OF YORKTOWN, and GEORGE OROS,  
individually,

Defendant(s).

----- X

Ralph F. Schoene, an attorney duly admitted to practice law in the United States District Court, Southern District of New York, hereby affirms the truth of the following under penalty of perjury:

1. I am a partner in the law firm of Vouté, Lohrfink, Magro & Collins, LLP, attorneys for defendant Linda Cooper, and as such I am familiar with the facts and circumstances of this matter.

2. This affirmation is respectfully submitted in support of the instant motion brought on behalf of defendant Linda Cooper seeking dismissal, pursuant to Federal Rules of Civil Procedure Rule 12(b)(6), of plaintiff's complaint insofar as it attempts to assert claims against Linda Cooper.

3. The court is respectfully referred to the affidavit of Linda Cooper dated August 20, 2008, the accompanying memorandum of law, and the following exhibits:

- a) Exhibit A: Plaintiff's complaint – a copy can be found as a exhibit to the motion to dismiss submitted on behalf of Nicholas Bianco and hence is not copied here.
- b) Exhibit B: Notice of Public Hearing with accompanying list of all properties which sought inclusion into Westchester County Agricultural District in 2006.
- c) Exhibit C: Letter of Linda Cooper dated March 26, 2007 addressed to David S. Kringe, Director of Environmental Planning for the Westchester County Department of Planning.

4. Based upon the foregoing, it is respectfully requested that the motion to dismiss plaintiff's complaint, insofar as it attempts to assert claims against defendant Linda Cooper be granted in its entirety.

Dated: White Plains, New York  
August 21, 2008

  
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RALPH F. SCHOENE

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COUNSELORS:

**PLEASE TAKE NOTICE AS DIRECTED BY THE COURT EXHIBIT "A"**  
**PLAINTIFF'S COMPLAINT IS NOT ANNEXED HERETO AS IT HAS**  
**BEEN PREVIOUSLY FILED WITH THE COURT VIA ECF ON JUNE 11,**  
**2008**

EXHIBIT “B”

### NOTICE

NOTICE IS HEREBY GIVEN that, pursuant to Section 303-b of the New York State Agriculture and Markets Law and Westchester County Act No. 55-2004, the Westchester County Board of Legislators has received requests for the inclusion of additional parcels of predominantly viable agricultural land within Westchester County Agricultural District No. 1.

Those additional parcels are described as follows:

<u>Request No.</u>	<u>Property Street Address</u>	<u>Jurisdiction</u>	<u>Acreage</u>
2006-01	15 Sarosca Lane	Harrison	5.89
2006-02	121 Route 100	Somers	14.47
2006-03	3117 Old Yorktown Road and 329 Underhill Avenue	Yorktown Yorktown	1.52 0.41
2006-04	145 Broad Brook Road	Bedford	17.79
2006-05	48 Girdle Ridge Road	Bedford	20.00
2006-06	Todd Road	Lewisboro	102.99
2006-07	371 Smith Ridge Road	Cortlandt	16.15
2006-08	61 Bedford-Banksville Road	North Castle	25.00
2006-09	8 Finch Road and 10 Finch Road	North Salem North Salem	2.25 2.05
2006-10	1715 East Main Street	Yorktown	0.75
2006-11	1160 Mamaroneck Avenue	White Plains	9.40
2006-12	Pines Bridge Road	New Castle	41.30
2006-13	195 Mead Street	Lewisboro	11.48
2006-14	491 and 501 Guard Hill Road	Bedford	9.45

The Westchester County Board of Legislators, pursuant to Section 303-b of the New York State Agriculture and Markets Law and Westchester County Act No. 55-2004, shall hold a public hearing to consider the proposed inclusion of these additional parcels of land in Westchester County Agricultural District No. 1 and the recommendations of the Westchester County Agricultural and Farmland Protection Board. The public hearing will be held at 7:30 p.m. on the 19<sup>th</sup> day of June, 2006 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York.

Westchester  
County Board of Legislators  
Andrew J. Spanio, Westchester County Executive

**Agriculture and Farmland Protection Board Report  
2006 Applications to Add Parcels to Westchester County Agricultural District**

Agriculture & Farmland  
Protection Board  
of Westchester County

No.	Farm Name	Owner Name	Property Location Street	Municipality	Tax Parcel from Tax Map	Acres From Assessment Data	Total Acres Added	Agricultural Operation	AFPB Recommendation
2006-01	Sarosca Farm	Steve Paradis and Sally Phillips Paradis	15 Sarosca Farm Lane	Harrison	0951-11	5.89	5.89	Community Supported Agriculture (Crops)	Recommend Approval
2006-02		Mike Amato	121 Route 100	Somers	38-17-4-5	14.47	0.00	Agriculture (Crops)	Already In
2006-03	Meadows Farm	Richard and Frances Woodard	3117 Old Yorktown Road	Yorktown	28-07-1-29	1.52	0.00	Vegetable and Nursery Crops (both wholesale and retail)	Already In
		Richard and Frances Woodard	329 Underhill Avenue	Yorktown	37-18-2-71	0.41	0.41	Vegetable and Nursery Crops (both wholesale and retail)	Recommend Approval
	Rental	Mary Lee Stuart	61 Granite Springs Road	Somers	26-11-1-11	60.00	0.00	Vegetable and Nursery Crops (both wholesale and retail)	Already In
2006-04	Rona Farm	Robert and Nancy Gierlow	145 Broad Brook Road	Bedford	Same	17.79	17.79	Equine Operation Horses, Gardens, Greenhouse, Hay, Mulch	Recommend Approval
2006-05	Canlito Corners	Martha Stewart	48 Girdle Ridge Rd	Bedford	Same	20.00	20.00	Plans to reestablish agricultural fields for crops and livestock	Recommend Approval
2006-06	Todd Farm	Todd Farm LLC	Todd Road	Lewisboro	Same	102.99	0.00	Christmas trees, Livestock, Eggs, Crops (vegetables, small fruit and berries), Honey	Not at this time
2006-07	Three Feathers Haberny's Farm	Joseph Haberny	371 Smith Ridge Road	Lewisboro	Same	16.15	16.15	Horse Boarding	Recommend Approval
2006-08	Rose Hill Farm	Rose Hill Farm LLC	61 Bedford Banksville Rd	North Castle	1/11/11-37	25.00	25.00	Horse Boarding	Recommend Approval
2006-09	Altebrook Farm	Linda Van Kooy	8 Finch Road	North Salem	8-1780-1	2.25	2.25	Horse Boarding	Recommend Approval
2006-10	Altebrook Farm	Linda Van Kooy	10 Finch Road	North Salem	8-1761-1	2.05	2.05	Winery	Recommend Approval
2006-11	Amadio's Garden Center and Flower Shop	Amadio's Garden Center and Flower Shop	1160 Mamaroneck Avenue	White Plains	Same	4.00	4.00	Crops (nursery) and Greenhouse	Recommend Approval
2006-12	Amadio's Garden Center and Flower Shop	Amadio's Garden Center and Flower Shop	1160 Mamaroneck Avenue	White Plains	Same	1.15	1.15	Crops (nursery) and Greenhouse	Recommend Approval
2006-13	Rock Laurel Farm	Dee DeBello	1160 Mamaroneck Avenue	White Plains	Same	4.25	4.25	Crops (nursery) and Greenhouse	Recommend Approval
	Rental	Dana Owens	195 Mead Street	Lewisboro	11155-62-24	21.32	0.00	Apaca	Already In
2006-14	Sun Raven Farm	Michael Finkelstein and Melissa Finkelstein	491 Guard Hill Road	Bedford	Same	4.00	4.00	Livestock	Recommend Approval
	Sun Raven Farm	Melissa Finkelstein	501 Guard Hill Road	Bedford	Same	5.45	5.45	Livestock	Recommend Approval

EXHIBIT “C”



Yorktown Town Hall

363 Underhill Avenue, P.O. Box 703 / Yorktown Heights, NY 10598  
(914) 962-5722

March 26, 2007

David S. Kvinge, AICP, ASLA  
Director of Environmental Planning  
Westchester County Department of Planning  
Room 432, 148 Martine Avenue  
White Plains, NY 10601

Dear Mr. *David* Kvinge;

The Town Board and I would like to comment on the three applications under consideration to be included in the Westchester County Agricultural district.

**2007 - 05: Hidden Hollow Farm: 427 Birdsall Drive, Yorktown**

This particular application is a horse stable with a riding ring that was once used for training carriage horses. However, it has been several years since any horses were stabled at the site. It also has a residential rental property within its acreage. The property abuts the North County Trailway on one side and other residential properties its other sides.

While this is not a traditional agricultural operation the Town Board and I think this, of the three applications, has the closest resemblance to something that might be able to be considered in an agricultural district, although as it is not currently used for such a purpose, we have some concerns as to the underlying reason for this request.

**2007 -07: The Winery at St. George: 1715 East Main Street, Yorktown**

This application seems to be premature. The Old Stone Church is a building that is eligible for state and local landmark status. As an aside, the owner has opposed the building being given landmark status. The use of the building has not yet been determined. Despite what has been submitted on the application for district inclusion, the owner has not been as forthcoming with the Town. He has not submitted to the Town a site plan application detailing how he intends to use the structure, which is a gateway location on Route 6 for the Lake Mohegan business district. Instead he has applied for and received a building permit for renovations to a single family residence, and has a pending wetlands permit application for work being done to a single-family residence.



Speaking on behalf of the entire Town Board, we believe it would be premature to grant someone the ability to be exempt from any rules and regulations for an operation that does not currently exist in an area that is constrained with wetlands, the Mohegan Lake outlet and the congestion associated with Route 6. This location is part of the Sustainable Development Study that the Town, County and State have worked on for several years. Its use, development and impact on the region needs to be evaluated in the context of SDS Study and Route 6.

Any use of this property should be done in conformance with the stated goals of the study, the Mohegan design plan and the Town's stated goal of preserving its historic heritage. Inclusion in the Ag District appears to be premature.

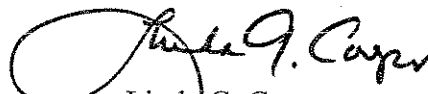
**2007 – 10: Meadows Farm: Underhill Avenue, Yorktown**

We provided information on this application last year. Nothing has changed. The Town Board and I remain opposed to this request for agricultural district status especially as the acreage request is not reflective of the actual acreage owned by the applicant. The property remains in non-compliance with environmental codes including an active New York City Department of Environmental Protection violation and a Town code violation. The property owner does not own all of the .7 acres being applied for as the Town is responsible for and is leasing this land from New York State.

As a community that not only embraced the creation of the local Agricultural District but lobbied extensively to have the County pass enabling legislation, we remain concerned that retail operations without any growing operations onsite will use the district in order to circumvent local planning and zoning practices. While we agree that farms that have been in existence should be insulated from the suburban communities that grow up around them and try to reign in the various agricultural practices that are necessary to keeping the operation going; we do not believe the exemptions should allow operations to set up shop outside of the normal zoning requirements under the guise of being a farm. We are concerned that every retail operation will be able to claim they purchase their goods from a local farm, as many of them do, and therefore should be exempt from Town planning and zoning regulations. This could have an egregious impact on our community.

While we love to support agricultural programs and indeed would like to start a Farmer's Market in the community, we are concerned when it appears basic planning and zoning rules of our community are being manipulated to advantage peripheral operations.

Sincerely yours,

  
Linda G. Cooper  
Town Supervisor

LGC/jp  
Encs.